

SERVICE DATE - LATE RELEASE JULY 2, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 192X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—
IN ANDERSON AND WOODFORD COUNTIES, KY

Decided: July 2, 2004

By decision and notice of interim trail use or abandonment (NITU) served on February 7, 2001, a 180-day period was authorized for the Rails to Trails Conservancy (RTC) to negotiate an interim trail use/rail banking agreement (agreement) with the Norfolk Southern Railway Company (NS) for a line of railroad between milepost 0.7-LL, at Lawrenceburg, and milepost 3.5-LL, at Tyrone, in Anderson and Woodford Counties, KY, a distance of approximately 2.8 miles (line). The 180-day negotiating period was scheduled to expire on July 11, 2001, but subsequent decisions served on July 13, 2001, January 14, 2002, July 10, 2002, January 6, 2003, and July 7, 2003, extended the NITU negotiation period for RTC until January 4, 2004.

At the request of RTC and the Tyrone Bridge and Rail Company (TBRC), the Board vacated the existing NITU and issued a second NITU on May 28, 2004, authorizing the TBRC to negotiate with NS and to serve as interim trail manager for the rail line. That decision also extended the trail use negotiation period to July 2, 2004.

On June 30, 2004, TBRC filed a motion to extend the NITU negotiation period for an additional 180 days. In its motion, TBRC also requested that the Board impose a public use condition on the abandonment authorization. By facsimile received on July 1, 2004, NS states that it has not consummated the abandonment and that it consents to the request to extend the trail use negotiation period.

Where, as here, the carrier is willing to continue trail use negotiations, the negotiating period may be extended.¹ The filings in support of the extension request have shown that the additional time is necessary to complete negotiations. An extension of time will promote the establishment of trails and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d). Accordingly, the NITU negotiating period will be extended through December 29, 2004.

¹ See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

TBRC's request for a public use condition, however, will be denied. Under 49 U.S.C. 10905 and 49 CFR 1152.28(b), the Board cannot impose a public use condition beyond a 180-day period after the effective date of the decision approving the abandonment (here January 26, 2000). That period ended on July 24, 2000.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. TBRC's request to extend the NITU negotiating period is granted.
2. The NITU negotiating period is extended through December 29, 2004.
3. TBRC's request for a public use condition is denied.
4. This decision is effective on the date of service.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary